

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES C. MCCURDY,  
Plaintiff,

v.

B. DEAL,  
Defendant.

Case No. 17-01043 BLF (PR)

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXTEND TIME TO FILE  
REPLY TO MOTION FOR LEAVE TO  
FILE RECONSIDERATION MOTION;  
DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

(Docket Nos. 109, 114)

Plaintiff, a state prisoner proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. (Docket No. 11.) On July 7, 2017, the Court found the amended complaint contained cognizable claims under the Eighth Amendment. (Docket No. 13.) On November 15, 2017, Plaintiff filed a motion for leave to file a second amended complaint ("SAC"). (Docket No. 55.) On January 25, 2018, the Court denied Plaintiff's motion for leave to file a SAC, and granted Plaintiff leave to file a supplemental complaint. (Docket No. 69.) On July 24, 2018, Plaintiff filed a supplemental complaint. (Docket No. 97.) Defendants filed a motion for summary judgment, (Docket No. 67), which the Court granted in part on September 10, 2018. (Docket No. 107.)

Plaintiff has filed motions requesting leave to file a motion for reconsideration. (Docket Nos. 108, 110.) The only remaining Defendant filed an opposition. (Docket No.

111.) Plaintiff has filed a motion requesting an extension of time to file a reply to Defendant's opposition. (Docket No. 114.) Having shown good cause, Plaintiff's motion, (Docket No. 108), is granted in part. Plaintiff shall file a reply **no later than fourteen (14) days** from the filing date of this order.

Plaintiff has also requested the Court appoint counsel to represent him. (Docket No. 109.) There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. *See Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), *withdrawn in part on other grounds on reh'g en banc*, 154 F.3d 952 (9th Cir. 1998) (en banc). The decision to request counsel to represent an indigent litigant under § 1915 is within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). Accordingly, Plaintiff's motion for appointment of counsel, (Docket No. 109), is **DENIED** without prejudice for lack of exceptional circumstances. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004); *Rand*, 113 F.3d at 1525 (9th Cir. 1997); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). This denial is without prejudice to the Court's *sua sponte* appointment of counsel at a future date should the circumstances of this case warrant such appointment.

This order terminates Docket Nos. 109 and 114.

**IT IS SO ORDERED**

Dated: December 10, 2018

  
BETH LABSON FREEMAN  
United States District Judge